

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
STATE OF TEXAS,)
)
)
Plaintiff,)
and)
)
BAYOU CITY WATERKEEPER,)
)
)
Plaintiff-Intervenor,)
)
v.) Civil Action No. 4:18-cv-03368
) Judge EWING WERLEIN, JR.
CITY OF HOUSTON, TEXAS,)
)
)
Defendant.)
)

**FIFTH JOINT REPORT ON THE PROGRESS
OF SETTLEMENT NEGOTIATIONS**

On March 11, 2019, Plaintiffs United States and the State of Texas (“State”) and Defendant City of Houston filed their Fourth Joint Report on the Progress of Settlement Negotiations. (ECF No. 35). The Fourth Joint Report advised the Court that the negotiating teams, representing the United States, the State and the City, had reached a proposed settlement of the claims alleged in the Plaintiffs’ Complaint (ECF No. 1), and that each negotiating team had committed to recommend the proposed settlement to its Party-Principals.¹ The Fourth Joint

¹ Counsel for the United States, the State, and the City wish to emphasize to the Court that they and others working with them are serving as negotiators for the respective Parties. Any references in this Fifth Joint Report to the Parties reaching a proposed settlement mean that the negotiating teams have agreed on positions they intend to recommend to the respective Party-Principals. The final written agreement will be subject to the review and approval of the Mayor of Houston and the City’s governing body and appropriate officials of the United States and the State authorized to approve final settlements.

Report also advised the Court that, within the next 30 days, the negotiating teams needed to finalize the settlement document and a number of appendices, would discuss their respective approval processes, and that each team would initiate its approval process. The negotiating teams now file this Fifth Joint Report to inform the Court of the status of the settlement process.

Since filing the last Joint Report, the negotiating teams have substantially finalized the settlement document and the appendices thereto. Each negotiating team has briefed its Party-Principal(s) and other appropriate persons on the terms of the proposed settlement. With respect to the United States Department of Justice (DOJ), the proposed settlement is subject to review and approval by the Assistant Attorney General for the Environment and Natural Resources Division and by the DOJ Principal Deputy Associate Attorney General. DOJ counsel has initiated the formal review and approval process. The proposed settlement must also be approved by the U.S. Environmental Protection Agency (EPA) Assistant Administrator of the Office of Enforcement and Compliance Assurance and by the EPA Region 6 Director of the Compliance Assurance and Enforcement Division. Counsel for the two EPA offices are also initiating their respective review and approval processes. With respect to the State of Texas, the proposed settlement must be approved by the Environmental Protection Division Chief, as well as members of the executive administration for the Office of the Attorney General of Texas, including the Deputy Attorney General for Civil Litigation and the First Assistant Attorney General.

Counsel for the United States and the State at this time are unable to provide the Court a precise date when each referenced review and approval process will be completed. However,

Accordingly, “negotiating teams” is used when reference is made to any party’s proposed settlement position.

Counsel for the United States and the State wish to emphasize for the Court that each has requested that each review and approval process be completed as expeditiously as possible.

Provided that the appropriate Federal and State Party-Principals approve the proposed settlement, counsel for the United States and the State will promptly notify counsel for the City, so that the City can conduct its approval process. The City's approval process involves presentation of the Consent Decree to the City Council in a public forum, followed by a vote at a City Council Agenda meeting. The United States and the State must obtain final approval of the settlement upon the City Council voting to approve the settlement.

Provided that the proposed settlement is approved by the United States, the State and the City, the United States will promptly publish notice of the proposed settlement in the Federal Register for a thirty-day public comment period. In addition, counsel for the State will promptly have notice of the proposed settlement published in the Texas Register for a thirty-day comment period.

CONCLUSION

The United States, the State and the City are all committed to complete the settlement process as promptly as possible. The parties will submit another Joint Report to the Court within 30 days, or sooner if the above-referenced approval processes are completed before the end of 30 days.

Respectfully submitted,

FOR THE UNITED STATES

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ATTORNEYS FOR THE STATE OF TEXAS

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2019, a copy of the foregoing Fifth Joint Report on the Progress of Settlement Negotiations was filed electronically with the Clerk of Court using the CM/ECF system. I also certify that I caused this filing to be served by e-mail and U.S. Mail on the following counsel:

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